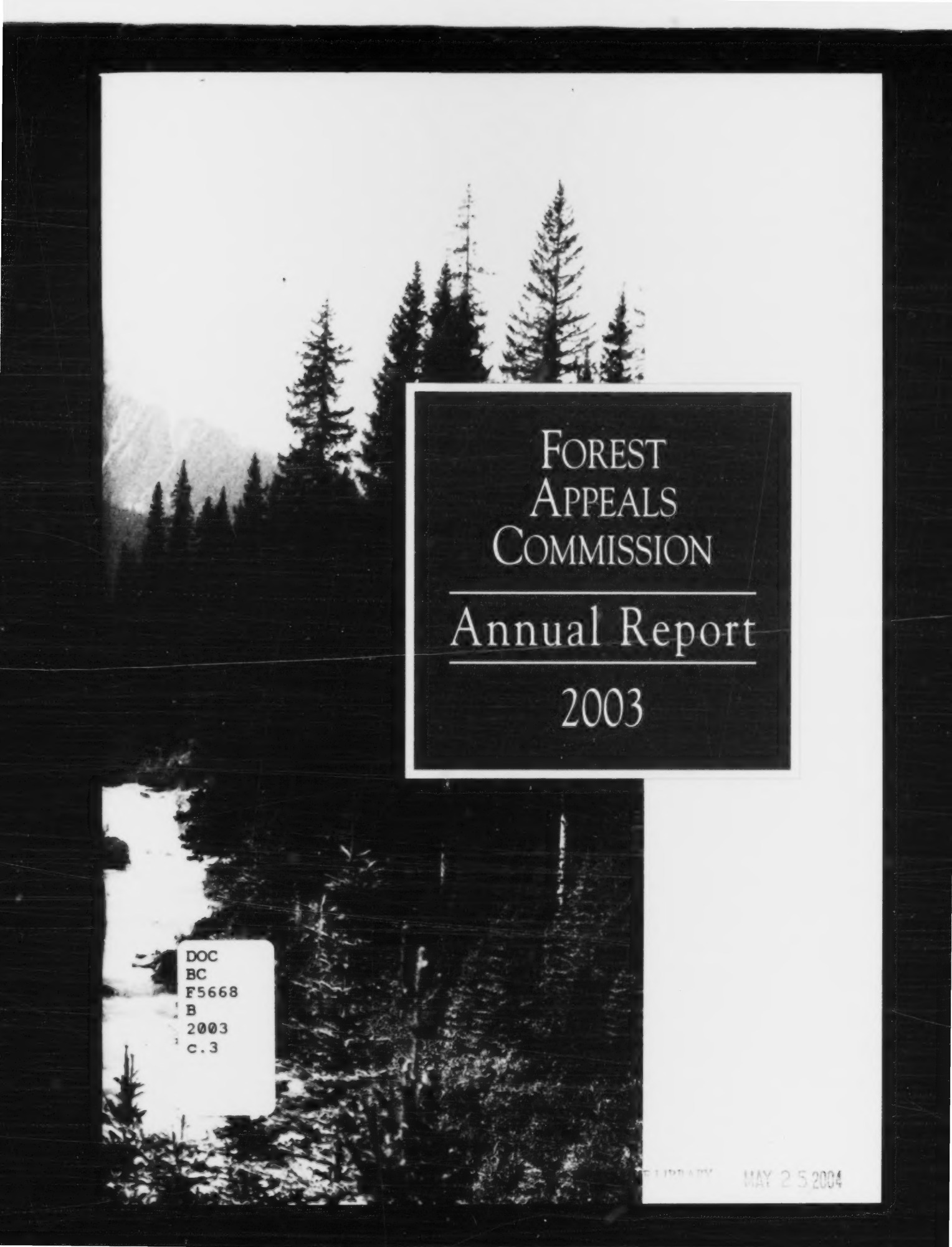

Forest Appeals Commission

Annual Report

2003

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Minister of Water, Land and Air Protection
Parliament Buildings
Victoria, British Columbia
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Honourable Richard Neufeld
Minister of Energy and Mines
Parliament Buildings
Victoria, British Columbia
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Dear Ministers:

I respectfully submit herewith the annual report of the Forest Appeals Commission for the period January 1, 2003 to December 31, 2003.

Yours truly,

Alan Andison
Chair
Forest Appeals Commission

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Message from the Chair

I am pleased to submit the ninth Annual Report of the Forest Appeals Commission.

The membership of the Forest Appeals Commission changed in 2003 with the departure of two members. On behalf of the Commission, I wish to thank Gerry Burch and Kristen Eirikson for all of their hard work and the significant contributions they have made to the Commission. Mr. Burch was Vice-Chair of the Commission since the Commission was established in 1995. Ms. Eirikson was also one of the initial appointees to the Commission. Their time and dedication is greatly appreciated and I wish them well in their future endeavours.

Ten new members were appointed to the Commission and I would like to welcome Sean Brophy, Bob Gerath, R.A. (Al) Gorley, Lynne Huestis, Paul Love, Gary Robinson, David J. Thomas, Robert Wickett, Stephen V.H. Willett and J.A. (Alex) Wood. These members are also members of the Environmental Appeal Board.

Some significant changes to forest legislation that will impact the work of the Commission were announced this year. The new *Forest and Range Practices Act* came into force in January 2004 after the conclusion of the reporting period. The *Private Managed Forest Land Act* received royal assent on November 17, 2003. Section 33 of that Act creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council. However, that Act is not yet in force.

This year, the Commission office has been actively involved in the preparation of Legislation to implement the results of phase one of the Core Services Review to consolidate the Forest Appeals Commission with the Environmental Appeal Board. The members of the two tribunals have been cross-appointed in anticipation of the proposed consolidation. The appointment of all members to both tribunals ensures that the necessary expertise required to adjudicate matters before both tribunals will be in place at the time of consolidation.

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Introduction

The Forest Appeals Commission is an independent tribunal that is established under the *Forest Practices Code of British Columbia Act* (the "*Code*"), which came into effect on June 15, 1995.

This is the ninth Annual Report of the Forest Appeals Commission. The information contained in this report covers the twelve-month period from January 1, 2003 to December 31, 2003.

This report describes the structure and function of the Commission and how the appeal process operates. As required by the *Administrative Review and Appeal Procedure Regulation*, this report also contains:

- the number of appeals initiated during the report period;
- the number of appeals completed during the report period (i.e., final decisions issued);
- the resources used in hearing the appeals;
- a summary of the results of appeals completed in the report period;
- an evaluation of the review and appeal processes; and,
- recommendations for amendments to the *Code*, the *Forest Act*, and the *Range Act* and their regulations respecting reviews and appeals.

Finally, summaries of appeals filed and the decisions made by the Commission during the report period are provided, legislative amendments affecting the Commission are described, and the relevant sections of the applicable legislation are reproduced.

Decisions of the Commission are available for viewing at the Forest Appeals Commission office, on the Commission's website, and at the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- British Columbia Courthouse Library Society
- West Coast Environmental Law Association Law Library

Detailed information on the Commission's policies and procedures can be found in the Forest Appeals Commission Procedure Manual, which can be obtained from the Commission office or viewed on the Commission's website. The Commission office can be contacted with any questions, or for additional copies of this report. The Commission can be reached at:

Forest Appeals Commission
Fourth Floor, 747 Fort Street
Victoria, British Columbia
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Website address:
www.fac.gov.bc.ca

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Forest Appeals Commission
PO Box 9425 Stn Prov Govt
Victoria, British Columbia V8W 9V1

The Commission

The Forest Appeals Commission is an independent agency, which provides a forum to appeal certain decisions made by government officials under the *Code*, the *Forest Act* and the *Range Act*. The Commission is also responsible for providing the Lieutenant Governor in Council (Cabinet) with an annual evaluation of the appeal and review processes, and with recommendations for amendments to the *Code*, the *Forest Act*, the *Range Act*, and the regulations respecting reviews and appeals.

Commission Membership

The Commission members are appointed by the Lieutenant Governor in Council (Cabinet) for a term of up to three years. The members are drawn from across the Province, representing diverse business and technical experience, and have a wide variety of perspectives. Commission membership consists of a full-time chair, a part-time vice-chair and a number of part-time members.

For this report period the Commission consisted of the following members:

MEMBER	FROM
Chair	
Alan Andison	Victoria
Vice-chairs	
Gerry Burch (to September 21, 2003)	Vancouver
David Ormerod (from March 21, 2003)	Victoria
Members	
Sean Brophy (from November 27, 2003)	Vancouver
Robert Cameron	North Vancouver
Richard Cannings	Naramata
Don Cummings	Penticton
Cindy Derkaz	Tappen
Bruce Devitt	Victoria
Kristen Eirikson (to November 21, 2003)	Victoria
Margaret Eriksson	New Westminster
Bob Gerath (from November 27, 2003)	North Vancouver
R.A. (Al) Gorley	Victoria
James Hackett	Nanaimo
Lynne Huestis (from November 27, 2003)	North Vancouver
Katherine Lewis	Prince George
Paul Love (from November 27, 2003)	Campbell River
Gary Robinson (from November 27, 2003)	Victoria
Lorraine Shore	Vancouver
David J. Thomas (from November 27, 2003)	Victoria
Robert J. Wickett (from November 27, 2003)	Vancouver
Stephen V.H. Willett (from November 27, 2003)	Kamloops
Phillip Wong	Vancouver
J.A. (Alex) Wood (from November 27, 2003)	North Vancouver

Administrative Law

Administrative law is the law that governs public officials and tribunals who make decisions that affect the rights and interests of people. Administrative law applies to the decisions and actions of statutory decision-makers or people who exercise power derived from legislation. The goal is to ensure that officials follow proper procedures and act within their jurisdiction.

The Commission is governed by the principles of administrative law and, as such, must treat all of the parties involved in a hearing fairly giving each party a chance to explain its position.

Appeals to the Commission are decided on a case-by-case basis. Unlike a court, the Commission is not bound by its previous decisions; present cases of the Commission do not necessarily have to be decided in the same way that previous ones were.

The Commission Office

The Commission office provides registry services, legal advice, research support, systems support, financial and administrative services, training, and communications support for the Commission.

The Commission shares its staff and its office space with the Environmental Appeal Board. The Environmental Appeal Board is an independent tribunal which hears appeals from administrative decisions made under six statutes: the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, the *Wildlife Act*, the *Commercial River Rafting Safety Act*, and the *Health Act*.

Each of the tribunals operates independently of one another. Supporting two tribunals through one administrative office gives each tribunal access to resources while, at the same time, cutting down on administration and operation costs. In this way, expertise can be shared, and work can be done more efficiently.

Commission Resources

The fiscal 2003/2004 budget for the Forest Appeals Commission was $332,000.

The fiscal 2003/2004 budget for the shared office and staff was $1,153,000.

Policy on Freedom of Information and Protection of Privacy

The appeal process is public in nature. Hearings are open to the public, and information provided to the Commission by one party must also be provided to all other parties to the appeal.

The Commission is subject to the *Freedom of Information and Protection of Privacy Act* and the regulations under that Act. If information is requested by a member of the public regarding an appeal, that information may be disclosed, unless the information falls under one of the exceptions in the *Freedom of Information and Protection of Privacy Act*.

Parties to appeals should be aware that information supplied to the Commission will be subject to public scrutiny and review.

The Appeal Process

Appeals under the *Forest Practices Code of British Columbia Act*

Not all determinations made under the *Code* can be appealed to the Commission. The *Code* specifies that only certain types of determinations are appealable.

Determinations that can be appealed under the *Code* are set out in sections 127 and 128. These include the following:

- the approval of an operational plan or an amendment;
- orders to abate or remove a fire hazard;
- determinations regarding fire control or suppression;
- orders regarding unauthorized construction or occupation of a building in a Provincial forest;
- orders regarding the unauthorized storage of hay on a Crown range, or range development;
- orders regarding unauthorized construction of trail or recreation facilities on Crown land;
- orders relating to the control of insects, disease, etc.;
- penalties for contravention of the *Code*, regulations, standards or an operational plan;
- remediation orders and stopwork orders; and,
- notices of determination that a person contributed to fire.

Determinations cannot be appealed to the Commission unless they have first been reviewed by a reviewer. The review and appeal of certain specified determinations may be initiated by the Forest Practices Board or by a person subject to the determination, or both.

Further information regarding the review process under the *Code* may be obtained from the local offices of the Ministry of Forests or the Ministry of Water, Land and Air Protection.

Appeals under the *Forest Act*

Appealable decisions under the *Forest Act* are set out in section 146 of the Act and include certain determinations, orders and decisions made by district or regional managers, timber sales managers, employees of the Ministry of Forests, and the Chief Forester. Appealable decisions include matters such as the determination of stumpage and the suspension of rights under a licence or agreement.

Certain decisions of the Chief Forester or an employee of the Ministry of Forests may be appealed to the Commission without prior review. However, determinations, orders or decisions made by a district or regional manager, or timber sales

manager, must be reviewed by a reviewer before they may be appealed. If the person who is subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Appeals under the *Range Act*

The following determinations, orders and decisions under the *Range Act* are appealable to the Commission:

- determinations, orders and decisions by a forest officer or district manager relating to the suspension of all or some of the rights granted under a licence or permit;
- determinations, orders and decisions by a district manager relating to the reinstatement of suspended rights; and,
- determinations, orders and decisions by a district manager relating to the cancellation of suspended rights or the cancellation of a licence or permit where rights were under suspension.

These determinations, orders or decisions cannot be appealed to the Commission unless they have first been reviewed by a reviewer. If the person subject to the decision, or the person in respect of whose agreement a decision is made, disagrees with the review decision, that person may appeal the review decision to the Commission.

Further information regarding the review processes under the *Forest Act* and the *Range Act* may be obtained from the local Ministry of Forests' offices.

Commencing an Appeal

Notice of Appeal

To commence an appeal, an appellant must prepare a Notice of Appeal and deliver it to the Forest Appeals Commission office within three weeks of the date the review decision is served on the person. The Notice of Appeal must contain the name and address of the appellant, the reasons why the appellant objects to the determination or review decision (the grounds for appeal), and the type of order the appellant is seeking from the Commission. The Notice of Appeal should also include the name and mailing address of the government officials responsible for the original determination and the review decision. In some cases, the review decision must be provided.

If the Commission does not receive the Notice of Appeal within three weeks of the review decision, the appellant will lose the right to appeal. However, the Chair, or a member of the Commission, may extend the deadline either before or after the time limit expires.

If the Notice of Appeal is missing any of the required information, the Commission will notify the appellant of the deficiencies. The Commission may refrain from taking any action on an appeal until the Notice is complete and any deficiencies are corrected.

Once a Notice of Appeal is accepted as complete, the Commission will notify the office of the official who made the determination, and the review decision being appealed. A representative of the Government of B.C. will be the respondent in the appeal.

Filing An Appeal

An appeal can be commenced under the *Code* by:

The person who was the subject of a decision

■

The Forest Practices Board

Appealable decisions under the *Code* are:

Administrative decisions that have undergone review by a reviewer

■

Review decision where there was a failure to make an administrative decision (can only be commenced by the Forest Practices Board)

An appeal can be commenced under the *Forest Act* or *Range Act* by:

The person in respect of whom a determination, order or decision was made

■

The person in respect of whose agreement the determination, order or decision was made

Appealable decisions under the *Forest Act* or *Range Act* are:

Administrative decisions by a district or regional manager, or a timber sales manager, that have undergone review by a reviewer where required

■

Administrative decisions by the Chief Forester and stumpage determinations by an employee of the Ministry of Forests

A Notice of Appeal consists of:

the appellant's name and address, along with the name and address of anyone representing him or her

■

the address to which the appellant wants notice and other official documents to be delivered

■

the name and mailing address of the government official responsible for the review decision

■

the grounds for appeal

■

description of the relief requested
(i.e. what decision the appellant would like the Commission to make)

■

if the appeal is from a determination as varied by the reviewer, a copy of the review decision must be provided with the Notice of Appeal

Third Party Status

The *Code* provides that, at any stage of an appeal, the Commission may grant third party status to a person who may be affected by the appeal. When the Forest Practices Board is not an appellant, the Commission will add the Board as a party to the appeal at the Board's request.

The *Forest Act* and the *Range Act* provide that only the appellant and the government are parties to appeals under those Acts.

Intervenors

The *Code* enables the Commission to invite or permit a person to participate in a hearing as an intervenor. An intervenor may participate in a hearing to the extent that the Commission allows.

The *Forest Act* and the *Range Act* do not provide for intervenor participation.

Type of Hearing

The Commission has the authority to conduct a new hearing on a matter before it (i.e. hearing *de novo*).

An appeal may be conducted by way of written submissions, oral hearing or a combination of both. In most cases, the Commission will conduct an oral hearing. However, in some instances the Commission may find it appropriate to order a hearing to proceed by way of written submissions.

Prior to ordering that a hearing be conducted by way of written submissions, the Commission may request input from the parties.

Written Hearing Procedure

If it is determined that the hearing will be by way of written submissions, the Commission will invite all parties and intervenors to provide submissions. The appellant will provide its submissions, including its evidence, first. The other parties will have an opportunity to respond to the appellant's submissions when making their own submissions, and to present their own evidence.

The appellant is then given an opportunity to comment on the submissions and evidence provided by the other parties.

Finally, all parties will be given the opportunity to provide closing submissions. Closing submissions should not contain new evidence.

Oral Hearing Procedure

As required by the *Administrative Review and Appeal Procedure Regulation*, the Commission will, within 30 days of receiving and accepting an appeal, determine which members will hear the appeal. At that time, the Commission will also set the date, time and location of the hearing. If the appeal is under the *Forest Act* or the *Range Act*, the hearing must be held within 45 days of the date the Commission receives the Notice of Appeal unless the Commission and all parties agree to a period other than 45 days.

When the date for a hearing is set, the parties involved will be notified. If any of the parties to the appeal cannot attend the hearing on the date scheduled, a request may be made to the Commission to change the date.

An oral hearing may be held in the locale closest to the affected parties, at the Commission office in Victoria or anywhere in the province. The Commission will decide where the hearing will take place on a case-by-case basis.

Once a hearing is scheduled, the parties will be asked to provide a Statement of Points to the Commission.

Statement of Points

To help identify the main issues to be addressed in an oral hearing, and the arguments that will be presented in support of those issues, *all* parties to the appeal are requested to provide the Commission, and each of the parties to the appeal, with a written Statement of Points and all relevant documents.

The Commission requires that the appellant submit its Statement of Points and documents at least 30 days prior to the commencement of the hearing. The respondent (government) and all other parties are required to submit their Statements of Points and documents at least 15 days prior to the commencement of the hearing. Each party is to ensure that the Commission, and all other parties to the appeal, receive a copy of their Statement of Points and documents within the set time frames.

The Statement of Points is, essentially, a summary of each party's case. As such, the content of each party's Statement of Points will depend on whether the party is appealing the decision or attempting to uphold the decision being appealed.

The Commission asks that the following information be contained in the respective party's Statement of Points:

(a) The appellant should outline:
   (i) the substance of the appellant's objections to the decision of the respondent;
   (ii) the arguments which the appellant will present at the hearing;
   (iii) any legal authority or precedent supporting the appellant's position; and,
   (iv) the names of the people the appellant intends to call as witnesses at the hearing.

(b) The respondent should outline:
   (i) the substance of the respondent's objections to the appeal;
   (ii) the arguments which the respondent will present at the hearing;
   (iii) any legal authority or precedent supporting the respondent's position; and,
   (iv) the names of the people the respondent intends to call as witnesses at the hearing.

Additional hearing participants that are granted party status or intervenor status are also asked to provide a Statement of Points outlining the above-noted points as may be relevant to that party.

Where a party has not provided the Commission with a Statement of Points by the specified date, the Commission has the authority to order the party to do so.

Pre-hearing Conference

Either before or after the Statements of Points and relevant documents have been exchanged, the Commission, or any of the parties, may request a pre-hearing conference.

Pre-hearing conferences provide an opportunity for the parties to discuss any procedural issues or problems, to resolve the issues between the parties, and to deal with any preliminary concerns.

A pre-hearing conference will normally involve the spokespersons for the parties, one Commission member and one staff member from the Commission office. It will be less formal than a hearing and will usually follow an agenda, which is set by the participants. The parties are given an opportunity to resolve the issues themselves giving them more control over the process.

If all of the issues in the appeal are resolved, there will be no need for a full hearing. Conversely, it may be that nothing will be agreed upon or some issues still remain and the appeal will proceed to a hearing.

Disclosure of Expert Evidence

The Commission is not bound by the provisions relating to expert evidence in the British Columbia *Evidence Act*. However, the Commission does require that reasonable advance notice of expert evidence be given and that the notice include a brief statement of the expert's qualifications and areas of expertise, the opinion to be given at the hearing, and the facts on which the opinion is based.

Summons

The Commission has the power to summon witnesses to give evidence at a hearing and bring documents related to the hearing.

If a party wants to ensure that an important witness attend the hearing, the party may ask the Commission to issue a summons. The request must be in writing and explain why the summons is required.

The Hearing

A hearing is a more formal process than a pre-hearing conference, and allows the Commission to receive the evidence it uses in making a decision.

In an oral hearing, each party will have a chance to present evidence. Each party will have an opportunity to call witnesses and explain its case to the Commission.

Although hearings before the Commission are less formal than those before a court, some of the hearing procedures are similar to those of a court: witnesses give evidence under oath or affirmation and witnesses are subject to cross-examination.

Parties to the appeal may have lawyers representing them at the hearing but this is not required. The Commission will make every effort to keep the process open and accessible to parties not represented by a lawyer.

All hearings before the Commission are open to the public.

Rules of Evidence

The rules of evidence used in a hearing are less formal than those used in a court. The Commission has full discretion to receive any information it considers relevant and then will determine what weight to give the evidence.

The Decision

In making its decision, the Commission is required to determine, on a balance of probabilities, what occurred, and to decide between the rights of the parties.

The Commission will not normally make a decision at the end of the hearing. Instead, in the case of both an oral and a written hearing, the final decision will be given in writing within a reasonable time following the hearing. Copies of the decision will be given to the parties, the intervenors, and the appropriate minister(s). In an appeal under the *Forest Act* or the *Range Act*, the Commission is required to serve its decision on the parties within 42 days after the conclusion of the hearing.

If a party disagrees with the decision of the Commission, that party may appeal the decision to the British Columbia Supreme Court. This appeal must be made within 3 weeks of being served with the Commission's decision. A party may only appeal the Commission's decision on a question of law or jurisdiction.

Where a decision is appealed to the Supreme Court, the court may confirm, reverse or vary the decision, or make any order the court considers just in the circumstances.

Costs

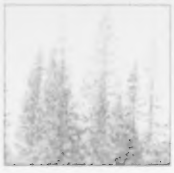
The Commission also has the power to award costs. If the Commission finds it is appropriate, it may order that a party or intervenor pay another party or intervenor any or all of the actual costs of the appeal.

Legislative Amendments Affecting the Commission

One of the Government's New Era commitments was to streamline the *Code* and to establish a new "results based" forest and range planning and practices framework that maintains both environmental protection and tough penalties for non-compliance. The *Forest and Range Practices Act* ("*FRPA*") received Royal Assent on November 21, 2002. However, as of the end of this reporting period, the *FRPA* had not yet come into force and will not do so until proclaimed by regulation.

A number of amendments were made to the *Forest Act* in 2003. The *Forest Statutes Amendment Act, 2003*, established BC Timber Sales to make the small business forest enterprise program more effective. That Act authorizes timber sales managers to make a number of decisions, some of which may be appealed to the Commission. In addition, the *Forest (Revitalization) Amendment Act (No. 2), 2003*, amended sections 143 and 146 of the *Forest Act*, thereby changing some of the types of determinations, orders and decisions that may be appealed to the Commission, and eliminating the requirement for an administrative review prior to an appeal of a stumpage determination.

Finally, the *Private Managed Forest Land Act* received royal assent on November 17, 2003. Section 33 of that Act creates a right of appeal to the Commission for persons who are subject to certain orders, decisions or determinations of the Private Managed Forest Land Council. However, that Act is not yet in force.



Evaluation and Recommendations

Under the *Administrative Review and Appeal Procedure Regulation* and section 197 of the *Code*, the Commission is mandated to annually evaluate the review and appeal process and identify any problems that have arisen. The Commission is also required to make recommendations on amendments to the *Code*, the *Forest Act* and the *Range Act* and their regulations respecting reviews and appeals.

Appeals

Overall, the number of appeals filed with the Commission in 2003 was lower than the number filed in 2002. There were fewer appeals filed under the *Forest Act* in 2003, as compared to 2002. Specifically, in 2003, two appeals were filed under the *Forest Act*, compared to five filed in 2002. As well, 2003 saw a minor decrease in the number of appeals filed under the *Code*. There were eight appeals filed under the *Code* in 2003, compared with ten in 2002. No appeals were filed under the *Range Act* in 2003.

Recommendations

In the Commission's 2002 Annual Report, the Commission outlined its involvement in the Administrative Justice Project. As part of that project, the Commission submitted two reports to the government and made recommendations on how the appeal process could be improved.

On February 5, 2002, the government directed the Commission to implement the recommendations that it made in its first report (phase 1 report); namely, to consolidate the Commission and the Environmental Appeal Board into a single tribunal, allowing for further administrative efficiencies through shared services and cross-appointments. Cross-appointments of existing members were made during the 2002 report period. All new appointments have been made to both the Forest Appeals Commission and the Environmental Appeal Board. A Request for Legislation was prepared to consolidate the two tribunals in this 2003 report period.

The Commission has no further recommendations to make with respect to the operation of the Commission at this time.

Statistics

Forest Appeals Commission

The following tables provide information on the appeals filed with the Commission and decisions published by the Commission, during the report period. The Commission publishes all of its decisions on the merits of an appeal, and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters that are not included in the statistics below.

A total of ten appeals were filed with the Commission in 2003. Eight of these appeals were filed under the *Code*, and two were filed under the *Forest Act*. By the end of 2003, no appeals had been rejected, withdrawn or abandoned, and three had been heard.*

The Commission issued seven decisions in 2003, including two consent orders.

Appeals filed		
Appeals filed under the *Code*	8	
Appeals filed under the *Forest Act*	2	
Appeals filed under the *Range Act*	0	
Total Appeals filed		10
Appeals abandoned rejected or withdrawn		0
Hearings held on the merits of appeals		
Oral hearings completed	1	
Written hearings completed	2	
Total hearings held on the merits of appeals**		3
Published Decisions issued		
Final decisions		
Under the *Code*	5	
Under the *Forest Act*	0	
Under the *Range Act*	0	
Consent Order (*Code*)	2	
Decisions on Preliminary Matters	0	
Decisions on Costs	0	
Total Published Decisions issued		7

▲ This table provides a summary of the appeals filed with this office and their status.

* Note: hearings held and decisions issued in 2003 do not necessarily reflect the number of appeals filed in 2003. Of the seven decisions issued in 2003, two were in relation to an appeal filed in 2000, three were in relation to appeals filed in 2002, and two were in relation to appeals filed in 2003.

** Note: most preliminary applications and post-hearing applications are conducted in writing. However, only the final hearings on the merits of the appeal have been included in this statistic.

Summaries of Appeals Filed

January 1, 2003 – December 31, 2003

Appeals filed under the *Code*, the *Forest Act*, and the *Range Act* have been reported separately.

In 2003, ten appeals were filed with the Commission. Eight of these appeals were filed under the *Code*, and two were filed under the *Forest Act*. There were no appeals filed under the *Range Act* in 2003.

Summaries of each of the appeals that were filed are provided below. The status of each of the appeals as of December 31, 2003 is provided after each summary.

Appeals under the *Code*

2003-FOR-001 Gary Foster v. Government of British Columbia

Appeal filed March 25, 2003

Gary Foster filed an appeal against an administrative review panel decision upholding a determination that he had contravened section 96(1) of the *Code* by harvesting crown timber without authorization and that he should pay a penalty of $3,750.68.

STATUS: Consent Order issued June 20, 2003

2003-FOR-002 Trifon Vlachos v. Government of British Columbia

Appeal filed March 24, 2003

Trifon Vlachos filed an appeal against an administrative review panel decision upholding a determination that he had contravened section 74 of the *Code* by conducting grazing operations contrary to approved range use plans and that he should pay a penalty of $500.

STATUS: Hearing held by way of written submissions concluding on August 1, 2003
Decision issued January 29, 2004

2003-FOR-003 Rick Lightburn and Wade Lightburn v. Government of British Columbia

Appeal filed April 15, 2003

Rick Lightburn and Wade Lightburn filed an appeal against an administrative review panel decision upholding a determination that they had contravened section 74 of the *Code* by conducting grazing operations contrary to approved range use plans and that they should pay a penalty of $500.

STATUS: Hearing held by way of written submissions concluding on July 17, 2003
Decision issued September 24, 2003

2003-FOR-004 Russel Bolen v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed October 06, 2003

Russel Bolen filed an appeal against an administrative review panel decision upholding a determination that he had contravened section 74 of the *Code* by conducting grazing operations contrary to an approved range use plan and that he

should pay a penalty of $500.

STATUS: Hearing held by way of written submissions concluding on January 20, 2004 Decision pending

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2003-FOR-005 Kalesnikoff Lumber Co. Ltd. v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed October 27, 2003

Kalesnikoff Lumber Co. Ltd. appealed a decision that it contravened section 45(3) of the *Code*, section 12(1)(b) of the *Forest Road Regulation* and the assessed penalty of $1,000.

STATUS: Hearing scheduled

2003-FOR-006 Kalesnikoff Lumber Co. Ltd. v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed October 27, 2003

Kalesnikoff Lumber Co. Ltd. appealed a decision that it contravened section 45(3) of the *Code*, section 13(1)(c) of the *Forest Road Regulation* and the assessed penalty of $3,600.

STATUS: Hearing scheduled

2003-FOR-007 Forest Practices Board v. Government of British Columbia (Robert Cork, Third Party)

Appeal filed November 10, 2003

The Forest Practices Board filed an appeal against an administrative review panel decision that upheld a finding of a contravention of section 67(2)(d) of the *Code* and varied the total amount of the penalty assessed to Robert Cork.

STATUS: Hearing scheduled

2003-FOR-008 Robert Cork v. Government of British Columbia (Forest Practices Board, Third Party)

Appeal filed November 17, 2003

Robert Cork filed an appeal against an administrative review panel decision upholding a finding of a contravention of section 67(2)(d) of the *Code* and varying the total amount of the penalty assessed against him of $14,095.

STATUS: Hearing scheduled

Appeals under the *Forest Act*

2003-FA-001 Riverside Forest Products Limited v. Government of British Columbia

Appeal filed October 24, 2003

Riverside Forest Products Limited appealed a stumpage advisory notice issued to it.

STATUS: Hearing held by way of written submissions concluding on January 30, 2004 Decision issued March 12, 2004

2003-FA-002 Slocan Forest Products Ltd. v. Government of British Columbia

Appeal filed November 26, 2003

Slocan Forest Products Ltd. appealed a stumpage advisory notice issued to it.

STATUS: Hearing held January 21, 2004 Decision issued March 4, 2004

Summaries of Decisions

January 1, 2003 – December 31, 2003

As stated under the "Statistics" section of this report, the Commission publishes all of its decisions on the merits of an appeal (final decisions), and most of the important preliminary and post-hearing decisions. The Commission also issues unpublished decisions on a variety of preliminary matters.

The following are summaries of published decisions that were issued by the Forest Appeals Commission during 2003. The Commission issued seven final decisions during 2003. All seven were issued under the *Code*. There were no decisions issued under either the *Forest Act* or the *Range Act*.

Appeals under the *Code*

2000-FOR-009(c) Forest Practices Board v. Government of British Columbia (Husby Forest Products Ltd., Naden Harbour Timber Ltd., Sitkana Timber Ltd., Dawson Harbour Logging Co. Ltd., TimberWest Forest Ltd., Third Parties) (Council of the Haida Nation, Intervenor)

Decision Date: October 23, 2003

Panel: Alan Andison, Bruce Devitt, Kristen Eirikson

This was an appeal by the Forest Practices Board against the decision of an administrative review decision.

The administrative review panel confirmed the District Manager's decision to approve a forest development plan (the "Plan") for five licences for a group of forestry corporations. The Plan includes cutblocks in the Tartu watersheds and the Naden watershed, both located on the Queen Charlotte Islands/Haida Gwaii.

For the Tartu watersheds, the issues before the Commission were whether the District Manager made a "determination" under the *Operational Planning Regulation* that a Coastal Watershed Assessment Procedure ("CWAP") was necessary for these watersheds before the Plan was submitted for approval, and whether the District Manager had authority under the *Code* to give conditional category A approval of the cutblocks in these watersheds.

For the Naden watershed, the issues before the Commission were whether the Plan was consistent with the results and recommendations of a CWAP, in accordance with the *Operational Planning Regulation*, and if not, whether the District Manager had authority to give conditional category A approval for a cutblock. If the District Manager did not have such authority, then the next issue was whether setting aside the approval of a cutblock is appropriate in light of events subsequent to the conditional approval of that cutblock.

Majority Decision: Alan Andison, Bruce Devitt

With regard to the Tartu watersheds, the majority of the Commission Panel found that the evidence did not support the conclusion that the

District Manager had formed the opinion that the risks associated with the proposed developments warranted obliging the licensee to carry out a CWAP. Therefore, the Commission held that "a district manager" did not determine, prior to the submission of the Plan, that a CWAP was necessary for the Tartu watersheds. The Commission Panel further found that the District Manager had ensured adequate protection for the forest resources in the Tartu by making a CWAP a condition of approval of the Plan.

With regard to the Naden watershed, the majority of the Commission Panel found the "statement of consistency" with a CWAP, provided in the Plan was inaccurate, and that the District Manager has an obligation to ensure that *Code* requirements are met, even when a plan has been approved by a professional. The Commission held that the portion of the Plan referring to one cutblock does not comply with the *Regulation*. The Commission further found that it was not sufficient for the District Manager to give conditional category A approval of that cutblock, and rescinded the District Manager's approval of that cutblock.

Accordingly, the majority of the Commission Panel upheld the approval of the cutblocks in the Tartu watershed, and rescinded the approval of one cutblock in the Naden watershed.

Minority Decision: Kristen Eirikson

The minority decision of the Commission Panel found that the District Manager had determined that a CWAP was necessary for the Tartu area, but a CWAP had not been carried out prior to the District Manager's conditional approval. Therefore, under the *Code* and *Regulations*, it was not within his authority to grant conditional approval to the Plan for this area.

The appeal was allowed, in part.

2000-FOR-009(d) Forest Practices Board v. Government of British Columbia (Husby Forest Products Ltd., Naden Harbour Timber Ltd., Sitkana Timber Ltd., Dawson Harbour Logging Co. Ltd., TimberWest Forest Ltd., Third Parties) (Council of the Haida Nation, Intervenor)

Decision Date: November 20, 2003

Panel: Alan Andison, Kristen Eirikson, James Hackett

This was an appeal by the Forest Practices Board against an administrative review panel decision confirming the approval of a forest development plan (the "Plan") for five licences for a group of forestry corporations. Specifically, the decision addressed the approval of certain cutblocks within the Plan that overlapped, or were situated within areas identified as draft Forest Ecosystem Networks ("FENs") in previous forest development plans. The FENs were developed, in part, because they contained marbled murrelet habitat or suitable habitat. The Appellant asked the Commission to set aside the approval of all the overlapping cutblocks, or alternately, to set aside the five cutblocks containing the most significant overlaps with the draft FENs.

The issues in this appeal were: whether hearings before the Commission are properly *de novo* hearings or hearings on the record; whether the Plan was prepared and submitted in accordance with section 41(1)(a) of the *Code*; and, whether the Plan adequately manages and conserves marbled murrelets in the area under the Plan, in accordance with sections 41(1)(b) and 41(3) of the *Code*. In deciding a response to the third issue, the Commission considered a number of sub-issues including: whether marbled murrelets are a "forest resource," as defined in the *Code*; the meaning of "adequately manage and conserve" in the context of section 41(1)(b) of the *Code*; whether the District Manager properly considered marbled murrelet

habitat outside the boundaries of the cutblocks, roads and other developments proposed in the Plan; and, whether the Plan approval meets the requirements of section 41(1)(b) with respect to marbled murrelets.

The Commission unanimously found that in deciding the issues in an appeal, it may consider information that was before the District Manager and the review panel, as well as new evidence that the parties may present at the hearing. The Commission's enabling legislation indicates that the Commission may choose to conduct a hearing as a hearing *de novo*.

Majority Decision: Alan Andison, James Hackett

With regards to the preparation of the Plan in accordance with section 41(1)(a), the majority of the Commission Panel found that the Third Parties were not required to include information about draft FENs or potential wildlife habitat areas ("WHAs") or old growth management areas ("OGMAs"). Therefore, the Third Parties' failure to include this information in the Plan did not breach the *Code*. The Commission held that the District Manager did not err in finding that the Plan was prepared in accordance with the *Code*.

Regarding the issue of whether the Plan adequately manages and conserves marbled murrelets, the Commission found that marbled murrelets are a "forest resource" under the *Code*. In addition, the Commission found that the District Manager was obliged to consider whether the Plan adequately managed and conserved marbled murrelets, even if the Plan was not required to include information about draft FENs, potential WHAs or OGMAs. The Commission also found that the proper question before the District Manager was whether the plan would "adequately," rather than perfectly, manage and conserve forest resources in the area under the Plan, including marbled murrelets. The question of whether the Plan would adequately manage and conserve the marbled murrelet involved a risk-based analysis.

The Commission also held that the *Code* requires the District Manager to consider whether the Plan meets its requirements in "the area to which it applies." In this case, the Commission found that the District Manager properly considered the possibility of suitable nesting habitat for marbled murrelets that lay outside the Plan areas. In addition, the Commission found that the Ministry of Forests had knowledge of the draft FENs, and data on the status of marbled murrelet populations in the area under the Plan. Furthermore, the knowledge about the draft FENs and marbled murrelets was held to be relevant to the District Manager's decision under the *Code*. Although the Identified Wildlife Management Strategy recommends that areas should be set aside after WHAs have been identified and accepted, and no WHAs had been approved when the Plan was approved, the Commission found that the District Manager still had discretion under the *Code* to reject cutblocks on the basis of protecting marbled murrelet habitat, when he considered the Plan.

In conclusion, the majority of the Commission Panel held that, with the exception of five cutblocks, the District Manager properly concluded that the Plan met the requirements of section 41(1)(b) of the *Code*. Accordingly, it confirmed that, with the exception of the five significant overlapping cutblocks indicated, the Plan will adequately manage and conserve marbled murrelets. The Commission ordered that the Plan be varied to exclude the approvals of those cutblocks.

Minority Decision: Kristen Eirikson

The minority of the Commission Panel found that the District Manager did not comply with section 41(1)(a) of the *Code*, when he approved a plan that did not meet the requirements of section

10(1)(c)(ii) of the *Code*. The minority held that the District Manager's decision was not just unreasonable with respect to the five cutblocks with the largest intrusion in the draft FENs, but with respect to all of the cutblocks that encroached upon the draft FENs. In addition, the minority found that there was not proper evidence before the District Manager for him to approve these cutblocks and satisfy his duty under section 41 of the *Code*. Furthermore, there was not sufficient information before the Commission to determine that any of the 51 cutblocks should properly be approved for cutting.

The appeal was allowed, in part.

2002-FOR-007(a) Weyerhaeuser Company Limited v. Government of British Columbia (Forest Practices Board, Third Party)
Decision Date: November 28, 2003
Panel: Alan Andison

Weyerhaeuser Company Limited appealed the District Manager's determination that it was responsible for the construction of two unauthorized stream crossings contrary to the *Timber Harvesting Practices Regulation*. The District Manager levied a penalty of $3,000 for the two contraventions.

The issue in this appeal was whether the District Manager's decision was issued within the limitation period established by the *Administration Remedies Regulation*.

The Commission found that the limitation period for levying a penalty in section 4(1) of the *Administrative Remedies Regulation* should start to run at the earliest point in the administrative process leading to a levying of a penalty. In this case, the limitation period began when the District Manager received a letter containing information about the facts surrounding the offence. The Commission further found that the District Manager's decision to levy penalties was made after the expiration of the limitation period, and was void for lack of jurisdiction. The Commission noted that the limitation period in the *Administrative Remedies Regulation* only applies to monetary penalties, and not to the determination of contravention. The Commission therefore upheld the District Manager's findings of contravention, and overturned the monetary penalties levied by the District Manager.

The appeal was allowed, in part.

2002-FOR-008(a) John Letkeman v. Government of British Columbia
Decision Date: March 11, 2003
Panel: Alan Andison

This was an appeal by John Letkeman against the District Manager's determination that Mr. Letkeman contravened section 48(1) of the *Code*. The determination was confirmed by an administrative review panel. By consent of the parties, the Commission ordered that the determination be rescinded.

2002-FOR-010(a) Steve Noel v. Government of British Columbia (Forest Practices Board, Third Party)
Decision Date: December 2, 2003
Panel: James Hackett

This was an appeal by Steve Noel against the District Manager's determination that Mr. Noel contravened section 96 of the *Code*, and the assessed penalty of $22,000. The determination was confirmed by an administrative review panel.

The issues in the appeal were whether Mr. Noel's improper harvesting was due to officially induced error, and whether the penalty was excessive and should be reduced.

The Commission held that, for Mr. Noel to benefit from the doctrine of officially induced error, the error must have been one of law. The Commission found that Mr. Noel harvested the wrong area due to an error of fact, not law. The

Commission also found that Mr. Noel's error of fact was his own, and was not induced by Ministry staff. However, the Commission found that in assessing the penalty, the District Manager mistakenly assumed that Mr. Noel had made a similar boundary error in the past, and, as such, the District Manager's assessment of the deterrent portion of the penalty was excessive. The Commission reduced the deterrent portion to $7,500, which reduced the total penalty to $14,500.

The appeal was allowed, in part.

2003-FOR-001 Gary Foster v. Government of British Columbia

Decision Date: June 20, 2003

Panel: Alan Andison

This was an appeal by Gary Foster against a District Manager's determination that he had contravened section 96 of the *Code*. The determination was upheld by an administrative review panel.

By consent of the parties, the Commission confirmed the District Manager's determination and reduced the penalty to $2,200.

2003-FOR-003(a) Rick Lightburn and Wade Lightburn v. Government of British Columbia

Decision Date: September 24, 2003

Panel: Lorraine Shore

The Lightburns appealed the District Manager's determination that the Appellants had contravened section 74 of the *Code* by conducting grazing operations contrary to their approved range use plans and should pay a penalty of $500. The determination and penalty were confirmed by an administrative review panel.

The Commission found that the Appellants had contravened section 74 of the *Code*. The Commission found that the Appellants were responsible for damage caused to riparian areas as a result of their cattle grazing operations and that the Appellants had not established a defence of due diligence, as they did not undertake reasonable measures to avoid or prevent damage to those areas.

Based on the circumstances of the case and a review of previous Commission decisions, the Commission held that the penalty should be reduced from $500 to $250.

The appeal was allowed, in part.

Appeals under the *Forest Act*

There were no decisions issued under the *Forest Act* during the report period.

Appeals under the *Range Act*

There were no decisions issued under the *Range Act* during the report period.

Appeals of Decisions

January 1, 2003 – December 31, 2003

British Columbia Supreme Court

Lloyd Bentley v. Forest Appeals Commission et al. 2003 B.S.C.S. 832

Decision Date: May 28, 2003

Court: Justice E.R.A. Edwards

Lloyd Bentley appealed a decision of the Commission which predominantly upheld a decision of an administrative review panel. The review panel had upheld a determination of the District Manager that Mr. Bentley had breached sections 96(1) and 97(1) of the *Code*.

There was no dispute that Mr. Bentley had logged timber from Crown land in violation of the *Code*, and had failed to ascertain the boundaries of his private land before beginning logging. The issue before the Court was whether the assessed penalty should be reduced. Mr. Bentley argued that the Commission failed to address his argument that the penalty should have reflected the Ministry of Forest's "contributory negligence" and, had it done so, the penalty would have been reduced. In addition, Mr. Bentley argued that the Commission erred in failing to deal with his request for an order for costs.

The Court found that the Commission made several findings of fact pertinent to the contributory negligence claim which precluded the application of contributory negligence principles in this case, assuming they had any application to an administrative proceeding. Therefore, the Court found that the Commission did not err with respect to contributory negligence.

However, the Court held that the Commission had erred by failing to deal with the issue of costs. Despite this, the Court decided not to direct the Commission to rule on costs, unless one of the parties applied to the Commission to do so.

The appeal was dismissed.

Supreme Court of Canada

Paul v. British Columbia (Forest Appeals Commission) 2003 S.C.C. 55

Decision Date: October 3, 2003

Court: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel, and Deschamps JJ.

The Ministry of Forests seized four logs in the possession of Mr. Paul, a registered Indian, who planned to use the wood to build a deck on his home. Mr. Paul asserted that he had an aboriginal right to cut timber for house modification and, accordingly, section 96 of the *Code*, a general prohibition against cutting Crown timber, did not apply to him. Both the District Manager and an administrative review panel agreed that Mr. Paul had contravened section 96. Mr. Paul appealed to

the Forest Appeals Commission, which decided, as a preliminary matter of jurisdiction, that it was able to hear and determine the aboriginal rights issues in the appeal. Mr. Paul appealed to the B.C. Supreme Court, which concluded that the Legislature had validly conferred on the Commission the power to decide questions relating to aboriginal title and rights in the course of its adjudicative function in relation to contraventions of the *Code*. Mr. Paul then appealed to the B.C. Court of Appeal, the majority of which set aside the decision, holding that section 91(24) of the *Constitution Act, 1867*, which gives Parliament exclusive power to legislate in relation to Indians, precluded the Legislature from conferring jurisdiction on the Commission to determine questions of aboriginal title and rights in the forestry context. The province appealed to the Supreme Court of Canada.

In a unanimous decision, the Supreme Court of Canada held that the province has legislative competence to endow an administrative tribunal with capacity to consider a question of aboriginal rights in the course of carrying out its valid provincial mandate. The *Code* is valid provincial legislation in relation to development, conservation and management of forestry resources in the province, and there was no suggestion that the law's effects on Indians are so significant as to reveal a pith and substance that is a matter under exclusive federal competence. As a law of general application, the *Code* applies *ex proprio vigore* to Indians, to the extent that it does not touch on the "core of Indianness" and is not unjustifiably inconsistent with section 35 of the *Constitution Act, 1982*. The effect of the *Code* is to prescribe that Indians who face an administrative penalty under the *Code* will first raise an aboriginal rights defence before the Commission, as opposed to before a superior court judge. This effect has not been shown to have a substantial impact upon Indians qua Indians.

The doctrine of interjurisdictional immunity relates to the exercise of legislative powers – that is, the power of a province to apply its valid legislation that affects matters under federal competence. The majority of the Court of Appeal erred in applying the doctrine in the context of an adjudicative, not legislative, function. In determining a question of aboriginal rights, a provincially constituted tribunal would be applying constitutional or federal law in the same way as a provincial court, which is also a creature of provincial legislation. Tribunals must take into account all applicable legal rules, both federal and provincial, in applying their enabling legislation.

A determination by an administrative tribunal, such as the Commission, is very different from both extinguishment of a right and legislation in relation to Indians or aboriginal rights. First, any adjudicator, whether a judge or a tribunal, does not create, amend, or extinguish aboriginal rights. Second, the Commission's decisions do not constitute legally binding precedents, nor will their collective weight over time amount to an authoritative body of common law. They could not be declaratory of the validity of any law. Moreover, as for constitutional determinations respecting sections 91(24) or 35, the Commission's rulings would be reviewable, on a correctness basis, by a superior court on judicial review.

To determine if a tribunal has the power to apply the Constitution, including section 35 of the *Constitution Act, 1982*, the essential question is whether the empowering legislation implicitly or explicitly grants to the tribunal the jurisdiction to interpret or decide any question of law. If it does, the tribunal will be presumed to have the concomitant jurisdiction to interpret or decide the question at issue in light of section 35 or any other relevant constitutional provision. There is no persuasive basis for distinguishing the power to determine section 35 questions from the power to determine other

constitutional questions, and practical considerations will not suffice generally to rebut the presumption that arises from authority to decide questions of law. Here, the Commission has the power to decide questions relating to aboriginal rights arising incidentally to forestry matters. Section 131(8) of the *Code* permits a party to "make submissions as to facts, law and jurisdiction." The Commission thus has the power to determine questions of law and nothing in the *Code* provides a clear implication to rebut the presumption that the Commission may decide questions of aboriginal law. Any restriction on the Commission's remedial powers is not determinative of its jurisdiction to decide section 35 issues, nor is the complexity of the questions.

The appeal was allowed.

APPENDIX I

Legislation and Regulations

The legislation contained in this report was up to date at the end of the reporting period. The sections that are highlighted represent the amendments to the legislation that came into effect during 2003. Please note that subsequent to the publication of this Annual Report, the legislation may have been amended. An updated version of the legislation may be obtained from Crown Publications.

Forest Practices Code of British Columbia Act

Part 6

COMPLIANCE AND ENFORCEMENT

Defences in relation to administrative proceedings

119.1 (1) For the purposes of a determination of a senior official under section 117, 118 or 119, no person may be found to have contravened a provision of this Act, the regulations, the standards or an operational plan if the person establishes that

(a) the person exercised due diligence to prevent the contravention,

(b) the person reasonably believed in the existence of facts that if true would establish that the person did not contravene the provision, or

(c) the person's actions relevant to the provision were the result of an officially induced error.

(2) Subsection (1) does not apply in respect of a determination made under section 117, 118 or 119 before the coming into force of this subsection.

Division 4 – Administrative Review and Appeals

Definitions

125.1 In this Division:

"review official" means

(a) for a review other than a review referred to in paragraph (b), a person employed in any of the ministries who is designated by name or title to be a review official by the deputy minister of that ministry, or

(b) for a review requested under section 128 (3) or (4), a person employed in the Ministry of Forests who is designated by name or title to be a review official by the deputy minister of the Ministry of Forests.

Determination not effective until proceedings concluded

126 (1) A determination that may be reviewed under section 127 does not become effective until the person who is the subject of the determination has no further right to have the determination

reviewed or appealed.

(2) Despite subsection (1), the chief forester may order that a determination, other than a determination to levy a penalty under section 117(1), 118(4) or (5) or 119, is not stayed or is stayed subject to conditions, on being satisfied that a stay would be contrary to the public interest.

(3) Despite subsection (1), a determination is not stayed if the determination is made

(a) under section 123(1), or

(b) under prescribed sections or for prescribed purposes.

Person subject to a determination may have it reviewed

127 (1) A person who is the subject of a determination under section 41, 82, 95(2), 99(2), 101(2), 102(3), 106(1), 117 to 120, 123(1), 162.1(1), 162.2(1) or (2) or 209.1(3) may deliver, to the review official named in the notice of determination, a written request for a review of the determination.

(2) The person must ensure that the request for review complies with the content requirements of the regulations.

(3) The person must deliver the request for review to the review official not later than 3 weeks after the date the notice of determination was given to the person.

(4) Before or after the time limit in subsection (3) expires, the review official may extend it.

(5) A person who does not deliver the request for review within the time specified loses the right to a review.

Forest Practices Board may have determination reviewed

128 (1) The board may request a review of

(a) a determination made under section 82, 95(2) or 117 to 120,

(b) a failure to make a determination under section 82, 95(2) or 117 to 120, and

(c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendment to either of those plans.

(2) To obtain a review of a determination under subsection (1)(a), the board must deliver a request for review to the review official specified in the notice of determination, and to the person who is the subject of the determination, not later than 3 weeks after the date the notice was given to the person who is the subject of the determination.

(3) To obtain a review of a failure to make a determination under subsection (1)(b), the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of "review official" in section 125.1, and to the person who would be subject to the determination, not later than 6 months after the occurrence of the event that would have been the subject of the determination.

(4) To obtain a review of a determination under subsection (1)(c), the board must deliver a request for review to the review official referred to in paragraph (b) of the definition of "review official" in section 125.1, and to the person who is the subject of the determination, not later than the prescribed period after the approval of the plan or amendment was

given to the person who is the subject of the determination.

(5) The board must ensure that the request for review complies with the content requirements of the regulations.

(6) A time limit referred to in subsection (2) or (4) may be extended, before or after its expiry, by

(a) the regional manager, for the time limit in subsection (2), and

(b) the deputy minister of the Ministry of Forests, for the time limit in subsection (4).

(7) If the board does not deliver the request for review within the time specified, the board loses the right to a review.

Review

129 (1) A review official who receives a request for review must ensure that the review is conducted by one or more persons who

(a) are employed under the *Public Service Act*, and

(b) have not made the determination under review, or are not the persons who failed to make a determination, if the review is for that reason, or have not participated in an investigation on which the determination was based.

(2) The reviewer may decide the matter, based on one or more of the following:

(a) the request for review and the ministries' files;

(b) the request for review, the ministries' files and any other communication with persons the reviewer considers necessary to decide the matter, including communicating with the person or board requesting the review and with the person who made or failed to make the determination;

(c) an oral hearing.

(3) After a request for review is delivered under section 127 or 128,

(a) the person who is the subject of the determination, or who would be the subject of a determination, if made,

(b) the board, if, under section 128, the board requested a review, and

(c) the government must disclose the facts and law on which the person, board and government will rely at the review, if required by the regulations and in accor dance with the regulations.

(4) If permitted by, and in accordance with, the regulations, the reviewer may refer to the commission a question of law raised in a review, if there is agreement to the referral by

(a) the person who is the subject of the determination or would be the subject of a determination, if made,

(b) the board, if, under section 128, the board requested the review, and

(c) the government.

(5) The reviewer may make a decision

(a) confirming, varying or rescinding the determination under review,

(b) referring a determination or failure to make a determination back to the person who made it or failed to make it with or without directions, or

(c) making a determination, if the review concerns the failure to make a determination.

(6) The reviewer must give a written decision to the person who is the subject of the determination or, for a review of a failure to make a determination, the person who would be the subject of a determination, if made, and the board within

(a) the prescribed period after the request for review was received by the review official, or

(b) another period agreed to by

(i) the person who is the subject of the determination, or who would be the subject of a determination, if made,

(ii) the board, if, under section 128, the board requested a review, and

(iii) the government.

(7) Despite subsection (6)(a), if the reviewer determines that the request for review does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under subsection (3), the prescribed period under subsection (6)(a) does not begin until a request for review is received that does comply with those requirements, or the facts and law are disclosed as required under subsection (3).

Determinations that may be appealed

130 (1) Subject to subsection (3), a person who is the subject of a determination referred to in

(a) section 127, or

(b) section 129(5)(c)

may appeal the determination to the commission.

(2) Subject to subsection (3), the board may appeal to the commission

(a) a determination referred to in section 128(1)(a),

(b) a failure to make a determination referred to in section 128(1)(b),

(c) if the regulations provide and in accordance with the regulations, a determination under Division 5 of Part 3 with respect to approval of a forest development plan, range use plan or amendments to either of those plans, and

(d) any determination for which a review decision has been given under section 129(6).

(3) No appeal may be made under subsection (1) or (2) unless the determination or failure to make a determination has first been reviewed under section 129.

(4) If a determination is varied by the reviewer, the appeal to the commission is from the determination as varied.

(5) If, as a result of a review of a failure to make a determination, the reviewer makes a determination, the appeal to the commission is from the determination made by the reviewer.

Appeal

131 (1) To initiate an appeal under section 130, the person referred to in section 130(1) or the board, no later than 3 weeks after receiving the review decision under section 129(6), must deliver to the commission a notice of appeal and

(a) in the case of a determination referred to in section 130(1)(a) or 130(2)(a), (c) or (d), enclose a copy of the determination, and

(b) in the case of the determination referred to in section 130(1)(b) or (2)(b), enclose a copy of the reviewer's determination.

(2) If the appeal is from a determination as varied under section 129, the person or board bringing the appeal must include a copy of the review decision with the notice of appeal given under subsection (1).

(3) The person or board bringing the appeal

must ensure the notice of appeal given under subsection (1) complies with the content requirements of the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) If the person or the board does not deliver the notice of appeal within the time specified, the person or board loses the right to an appeal.

(6) On receipt of the notice of appeal, the commission must, in accordance with the regulations, give a copy of the notice of appeal to the ministers and

(a) to the board, if the notice was delivered

(i) by the person who is the subject of the determination, or

(ii) for an appeal of a failure to make a determination, by the person who would be the subject of a determination, if made,

(b) to the person who is the subject of the determination, if the notice was delivered by the board, or

(c) for an appeal of a failure to make a determination, to the person who would be the subject of a determination, if made, if the board delivered the notice.

(7) The government, the board, if it so requests, and the person who is the subject of the determination or would be the subject of a determination, if made, are parties to the appeal.

(8) At any stage of an appeal the commission or a member of it may direct that a person who may be affected by the appeal be added as a party to the appeal.

(9) After a notice of appeal is delivered under subsection (1), the parties must disclose the facts and law on which they will rely at the appeal, if required by the regulations and in accordance with the regulations.

(10) The commission, after receiving a notice of appeal, must

(a) promptly give the parties to an appeal a hearing, or

(b) hold a hearing within the prescribed period, if any.

(11) Despite subsection (10), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts or law under sub section (9) or (14), the commission need not hold a hearing within the prescribed period referred to in subsection (10), but must hold a hearing within the prescribed period after a notice of appeal that does comply with the content requirements of the regulations is delivered to the commission, or the facts and law are disclosed as required under subsection (9) or (14).

(12) A party may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under section 129,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(13) The commission may invite or permit a person to take part in a hearing as an intervenor.

(14) An intervenor may take part in a hearing to the extent permitted by the commission and must disclose the facts and law on which the intervenor will rely at the appeal, if required by the regulations and in accordance with the regulations.

(15) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Referral of questions of law

131.1 A hearing regarding a question of law referred under section 129(4) must be conducted in accordance with the regulations.

Order for written submissions

132 (1) The commission or a member of it may order the parties to deliver written submissions.

(2) If the party that initiated the appeal fails to deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that every party to the appeal has the opportunity to review written submissions from the other parties and an opportunity to rebut the written submissions.

Interim orders

133 The commission or a member of it may make an interim order in an appeal.

Open hearings

134 Hearings of the commission must be open to the public.

Witnesses

135 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

136 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

137 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

relevant to the subject matter of the appeal and may act on the evidence.

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court by reason of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

138 (1) On an appeal of a determination or of the confirmation, variance or rescission of a determination, the commission may consider the findings of

(a) the person who made the determination that is being appealed, or

(b) the reviewer.

(2) On the appeal, the commission may

(a) confirm, vary or rescind the determination appealed from, or

(b) refer the matter with or without directions back to the person

(i) who made the initial determination, or

(ii) in the case of a determination made under section 129(5)(c), the reviewer who made the determination.

(3) On considering a question of law referred to the commission under section 129(4), the commission may decide the question of law and the decision is binding

(a) on the reviewer for the purposes of the review in question, and

(b) on the commission for the purposes of an appeal concerning the determination or the failure to make a determination that was subject of the review in question.

(4) The commission may order that a party or intervenor pay another party or intervenor any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an order of the court.

Decision of commission

139 (1) The commission must make a decision promptly after the hearing, and must give copies of the decision to the ministers, the parties and any intervenors.

(2) On the request of any of the ministers or a party, the commission must provide written reasons for the decision.

(3) The commission must make a decision within the prescribed period, if any.

Order for compliance

140 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission or a party may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to court

141 (1) The minister or a party to the appeal, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision or order of the commission be stayed in whole or in part.

(3) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Part 9

FOREST APPEALS COMMISSION

Forest Appeals Commission Continued

194 (1) The Forest Appeals Commission is continued.

(1.1) The commission is to hear appeals under

(a) Division 4 of Part 6, and

(b) the *Forest Act* and *Range Act* and, in relation to appeals under those Acts, the commission has the powers given to it by those Acts.

(2) The commission consists of a chair, one or more vice chairs and other members the Lieutenant Governor in Council may appoint.

(3) Appointments under subsection (2) may be for a term of up to 3 years.

(4) The Lieutenant Governor in Council may

(a) appoint a person as a temporary member to deal with a matter before the commission, or for a specified period or during specified circumstances, and

(b) designate a temporary member as chair.

(5) A temporary member has all the powers and may perform all the duties of a member of the commission during the period, under the circumstances or for the purpose of the appointment.

(6) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the members of the commission.

Organization of the commission

195 (1) The chair may organize the commission into panels, each comprised of one or more members.

(2) The members of the commission may sit

(a) as a commission, or

(b) as a panel of the commission

and 2 or more panels may sit at the same time.

(3) If members of the commission sit as a panel,

(a) the panel has the jurisdiction of, and may exercise and perform the powers and duties of, the commission, and

(b) an order, decision or action of the panel is an order, decision or action of the commission.

Application of other sections

196 Sections 191 and 193 apply to the commission.

Mandate of the commission

197 (1) In accordance with the regulations, the commission must

(a) hear appeals under Division 4 of Part 6 and under the *Forest Act* and the *Range Act*,

(b) provide

(i) the ministers with an annual evaluation of the manner in which reviews and appeals under this Act and the regulations are functioning and identify problems that may have arisen under their provisions, and

(ii) the Minister of Forests with an annual evaluation of the manner in which reviews and appeals under the *Forest Act* and the *Range Act* and the regulations relating to those reviews and appeals are functioning and identify problems that may have arisen under their provisions, and

(c) annually, and at other times it considers

appropriate, make recommendations

(i) to the ministers concerning the need for amendments to this Act and the regulations respecting reviews and appeals,

(ii) to the Minister of Forests concerning the need for amendments to the *Forest Act* and the *Range Act* and related regulations respecting reviews and appeals under those Acts, and

(d) perform other functions required by the regulations.

(2) The chair must give to the ministers an annual report concerning the commission's activities.

(3) The ministers must promptly lay the report before the Legislative Assembly.

The sections that are highlighted represent the amendments to the *Forest Act* that came into effect during 2003.

Forest Act

Part 12

REVIEWS, APPEALS, REGULATIONS, PENALTIES

Division 2 – Appeals

Determinations that may be appealed

146 (1) Subject to subsection (3), an appeal may be made to the Forest Appeals Commission from a determination, order or decision that was the subject of a review required under Division 1 of this Part.

(2) An appeal may be made to the Forest Appeals Commission from a determination, order or decision of

(a) the chief forester, under section 60(2), 68, 70(1), 77(1)(a) or 112(1)

(b) the chief forester, by way of a determination, under section 66(4)(b) or (5)(b), of the area of Crown land described in that section, and

(c) a determination of an employee of the ministry under section 105(1).

(3) No appeal may be made under subsection (1) unless the determination, order or decision has first been reviewed under Division 1 of this Part.

(4) If a determination, order or decision referred to in subsection (1) is varied by the person conducting the review, the appeal to the commission is from the determination, order or decision as varied under section 145.

(5) If this Act gives a right of appeal, this Division applies to the appeal.

(6) For the purpose of subsection (1), a redetermination or variation of stumpage rates under section 105(1) is considered to be a determination.

Notice of appeal

147 (1) If a determination, order or decision referred to in section 146(1) or (2) is made, the person

(a) in respect of whom it is made, or

(b) in respect of whose agreement it is made

may appeal the determination, order or decision by

(c) serving a notice of appeal on the commission

(i) in the case of a determination, order or decision that has been reviewed, not later than 3 weeks after the date the written decision is served on the person under

section 145(3), and

(ii) in the case of a determination, order or decision that has not been reviewed, not later than 3 weeks after that date the determination, order or decision is served on the person under the provisions referred to in section 146(2), and

(d) enclosing a copy of the determination, order or decision appealed from.

(2) If the appeal is from a determination, order or decision as varied under section 145, the appellant must include a copy of the review decision with the notice of appeal served under subsection (1).

(3) The appellant must ensure that the notice of appeal served under subsection (1) complies with the content requirements of the regulations.

(3.1) After the notice of appeal is served under subsection (1), the appellant and the government must disclose the facts and law on which the appellant or government will rely at the appeal if required by the regulations and in accordance with the regulations.

(4) Before or after the time limit in subsection (1) expires, the chair or a member of the commission may extend it.

(5) A person who does not serve the notice of appeal within the time required under sub section (1) or (4) loses the right to an appeal.

Appeal

148 (1) The commission, after receiving the notice of appeal, must

(a) promptly hold a hearing, or

(b) hold a hearing within the prescribed period, if any.

(2) Despite subsection (1), if the commission determines that the notice of appeal does not comply with the content requirements of the regulations, or that there was a failure to disclose facts and law required under section 147(3.1), the commission need not hold a hearing within the prescribed period referred to in subsection (1) of this section, but must hold a hearing within the prescribed period after service of a notice of appeal that does comply with the content requirements of the regulations, or the facts and law are disclosed as required under section 147(3.1).

(3) Only the appellant and the government are parties to the appeal.

(4) The parties may

(a) be represented by counsel,

(b) present evidence, including but not limited to evidence that was not presented in the review under Division 1 of this Part,

(c) if there is an oral hearing, ask questions, and

(d) make submissions as to facts, law and jurisdiction.

(5) A person who gives oral evidence may be questioned by the commission or the parties to the appeal.

Order for written submissions

148.1 (1) The commission or a member of it may order the parties to an appeal to deliver written submissions.

(2) If the appellant does not deliver a written submission ordered under subsection (1) within the time specified in the order, the commission may dismiss the appeal.

(3) The commission must ensure that each party to the appeal has the opportunity to review written submissions from the other

party and an opportunity to rebut the written submissions.

Interim orders

148.2 The commission or a member of it may make an interim order in an appeal.

Open hearings

148.3 Hearings of the commission are open to the public.

Witnesses

148.4 The commission or a member of it has the same power as the Supreme Court has for the trial of civil actions

(a) to summon and enforce the attendance of witnesses,

(b) to compel witnesses to give evidence on oath or in any other manner, and

(c) to compel witnesses to produce records and things.

Contempt

148.5 The failure or refusal of a person

(a) to attend,

(b) to take an oath,

(c) to answer questions, or

(d) to produce the records or things in his or her custody or possession,

makes the person, on application to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Evidence

148.6 (1) The commission may admit as evidence in an appeal, whether or not given or proven under oath or admissible as evidence in a court,

(a) any oral testimony, or

(b) any record or other thing

(2) Nothing is admissible in evidence before the commission or a member of it that is inadmissible in a court because of a privilege under the law of evidence.

(3) Subsection (1) does not override an Act expressly limiting the extent to or purposes for which evidence may be admitted or used in any proceeding.

(4) The commission may retain, call and hear an expert witness.

Powers of commission

149 (1) On an appeal, whether or not the person who conducted the review confirmed, varied or rescinded the determination, order or decision being appealed, the commission may consider the findings of

(a) the person who made the initial determination, order or decision, and

(b) the person who conducted the review.

(2) On an appeal, the commission may

(a) confirm, vary or rescind the determination, order or decision, or

(b) refer the matter back to the person who made the initial determination, order or decision with or without directions.

(3) If the commission decides an appeal of a determination made under section 105, the commission must, in deciding the appeal, apply the policies and procedures approved by the minister under section 105 that were in effect at the time of the initial determination.

(4) The commission may order that a party pay any or all of the actual costs in respect of the appeal.

(5) After filing in the court registry, an order under subsection (4) has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken as if it were an

order of the court.

(6) Unless the minister orders otherwise, an appeal under this Division does not operate as a stay or suspend the operation of the determination, order or decision under appeal.

Decision of commission

149.1 The commission must make a decision promptly after the hearing and serve copies of the decision on the appellant and the minister.

(2) On request of the appellant or the minister, the commission must provide written reasons for the decision.

(3) The commission must serve a decision within the prescribed period, if any.

Order for compliance

149.2 If it appears that a person has failed to comply with an order or decision of the commission or a member of it, the commission, minister or appellant may apply to the Supreme Court for an order

(a) directing the person to comply with the order or decision, and

(b) directing the directors and officers of the person to cause the person to comply with the order or decision.

Appeal to the courts

150 (1) The appellant or the minister, within 3 weeks after being served with the decision of the commission, may appeal the decision of the commission to the Supreme Court on a question of law or jurisdiction.

(2) On an appeal under subsection (1), a judge of the Supreme Court, on terms he or she considers appropriate, may order that the decision of the commission be stayed in whole or in part.

(3) An appeal from the decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

The sections that are highlighted represent the amendments to the *Range Act* that came into effect during 2003.

Range Act

Review and appeal

41 (1) A review may be required of a determination, order or decision of

(a) a forest officer under section 34, and under a licence or permit, and

(b) a district manager under sections 31, 32, 34, and 35, and under a licence or permit.

(c) [Repealed 1997-48-152.]

(2) A review of the determination, order and decision referred to in subsection (1)(a) and (b) is to be conducted by the regional manager.

(3) If a review is to be conducted by the regional manager under subsection (2), the regional manager may delegate the power to decide the review to an official in the Ministry of Forests.

(4) Subject to subsection (5), an appeal may be made to the Forest Appeals Commission from a determination, order or decision of a forest officer or district manager under the provisions referred to in subsection (1) but only if the determination, order or decision has first been reviewed.

(5) If a determination, order or decision referred to in subsection (1) is varied by the person conducting a review, the appeal

to the Forest Appeals Commission is from the determination, order or decison as varied.

(6) The procedures and powers in respect of reviews and appeals under the *Forest Act* apply to reviews and appeals under this section.

Appeal from section 26 decision

42 (1) Section 41 does not apply to an appeal from a decision of a district manager made under section 26.

(2) The holder of a licence or permit affected by a decision to change boundaries under section 26 may appeal the change to the minister by serving, within 21 days after service of the notice referred to in section 26(2), written notice of the appeal on the district manager who made the decision.

(3) The notice of appeal must include the name and address of the appellant, the reasons in support of the appeal and a copy of the notice of the change being appealed.

(4) The minister, or a person designated in writing by the minister, must promptly

(a) hear the appeal,

(b) confirm, reverse or vary the decision of the district manager, and

(c) provide the appellant with a written decision by delivering a copy to the appellant, or by mailing a copy to the appellant by registered mail to the address of the appellant in the notice of appeal.

Appeal not a stay

43 Unless the minister orders otherwise, a review or an appeal taken under this Act does not operate as a stay or suspend the operation of the determination, order or decision being reviewed or appealed.

APPENDIX II

Administrative Review and Appeal Procedure Regulation
(B.C. Reg. 114/99)

Part 1

DEFINITIONS

Definitions

1 (1) In this regulation:

"appellant" means

(a) for a *Forest Act* appeal, the person that initiates an appeal under section 147(1) of that Act,

(b) for a *Range Act* appeal, the person that initiates an appeal under section 41(4) of that Act, or

(c) for a *Forest Practices Code of British Columbia Act* appeal, the person that initiates an appeal under section 131(1) of that Act, and includes the board if the board initiates an appeal under section 131(1) of that Act;

"requesting person" means a person that requests a review of

(a) a determination, order or decision under the *Forest Act* or *Range Act*, or

(b) a determination under the *Forest Practices Code of British Columbia Act*,

and includes the board if the board requests a review of a determination, or a failure to make a determination, under the *Forest Practices Code of British Columbia Act*;

"reviewer" means

(a) for a review under the *Forest Act*,

(i) the regional manager if the review concerns a determination, order or decision referred to in section 143(1)(a) or (c) of the *Forest Act*,

(ii) the chief forester if the review concerns a determination, order or decision referred to in section 143(1)(b) of the *Forest Act*, or

(iii) the person to whom, under section 143(3) of the *Forest Act*, the regional manager or chief forester delegates the power to decide the review,

(b) for a review under the Range Act,

(i) the regional manager if the review concerns a determination, order or decision referred to in section 41(1)(a) or (b) of the *Range Act*, or

(ii) the person to whom, under section 41(3) of the Range Act, the regional manager delegates the power to decide the review, or

(c) for a review under the *Forest Practices Code of British Columbia Act*, "reviewer" as defined in section 1(1) of that Act.

(2) For the purposes of Division 4 of Part 6 of the *Forest Practices Code of British Columbia Act* and this regulation, "ministries" means the Ministry of Forests, the Ministry of Environment, Lands and Parks and the Ministry of Energy and Mines.
[am. B.C. Reg. 76/2001, Sch. 1, ss. 1 and 2.]

Part 2

ADMINISTRATIVE REVIEW PROCEDURE

Division 1 – Requesting a Review

Review requests by board

2 (1) The board may request a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to approval of a forest development plan, range use plan or amendment to either plan if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of that Act or the regulations made under that Act.

(2) The board may request a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to

(a) a forest development plan,

(b) a range use plan, or

(c) an amendment to either plan

if the board believes that, in relation to the preparation of the plan or amendment, there has been a contravention of the *Forest Practices Code of British Columbia Act* or the regulations made under that Act.

(3) The prescribed period for the purposes of section 128(4) of the *Forest Practices Code of British Columbia Act* is 45 days.
[en. B.C. Reg. 76/2001, Sch. 1, s. 3.]

Request for review: content requirements

3 (1) For

(a) a review of a determination, order or decision referred to in section 143(1) of the *Forest Act* or section 41 (1) of the *Range Act*,

(b) a review of a determination referred to in section 127(1) or 128(1)(a) of the *Forest Practices Code of British Columbia Act*,

(c) a review of a failure to make a determination referred to in section 128(1)(b) of the *Forest Practices Code of British Columbia Act*, or

(d) a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan,

the request for review must be signed by, or on behalf of, the requesting person and must contain all of the following information:

(e) the name and address of the requesting person;

(f) the address for service of the requesting person;

(g) the grounds for review;

(h) a statement of the relief requested.

(2) In addition to the requirements of subsection (1), a request made by the board must also include the following information:

(a) for a review of a failure to make a determination, the name of the person whose failure to make a determination is the subject of the request;

(b) for a review of a determination with respect to the approval of a forest development plan, range use plan or

amendment to either plan,

(i) the name of the agreement holder to which the plan or amendment relates, and

(ii) the name of the person who made the determination;

(c) for a review of giving effect under section 40 of the *Forest Practices Code of British Columbia Act* to a forest development plan, range use plan or amendment to either plan, the name of the person who gave effect to the plan or amendment.

[en. B.C. Reg. 76/2001, Sch. 1, s. 4.]

Division 2 – Procedures after Receipt of Request for Review under the *Forest Act* and *Range Act*

Reviews conducted under the *Forest Act* and *Range Act*

4 Sections 5 to 8 apply to requests for reviews under the *Forest Act* and *Range Act*.

Notification of parties following receipt of request for review

5 The reviewer must acknowledge in writing any request for review.

Deficient request for review

6 (1) If a request for review does not comply with section 3, the reviewer may serve a written notice of deficiencies on the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer serves a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the reviewer of further material remedying the deficiencies.

(3) The reviewer must serve a copy of the request and any notice of deficiency on the person who made the determination, order or decision that is the subject of the request.

[am. B.C. Reg. 76/2001, Sch. 1, s. 5.]

Notice of review

7 The reviewer must serve a notice of review to the person who requested the review, and to the person referred to in section 6(3), setting out,

(a) in accordance with section 145(1) of the *Forest Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

8 The prescribed period for the purposes of section 145(3)(a) of the *Forest Act* is 60 days.

Division 3 – Procedures after Receipt of Request for Review under the *Forest Practices Code of British Columbia Act*

Reviews conducted under the *Forest Practices Code of British Columbia Act*

9 Sections 10 to 14 apply to request for reviews under the *Forest Practices Code of British Columbia Act*.

Notification of parties following receipt of a request for review

10 (1) The reviewer must acknowledge in writing any request for review.

(2) If a request for review is

(a) made by a requesting person, other than the board, the reviewer must give a copy of the request to

(i) the person who made the determination that is the subject of the request, and

(ii) the board, or

(b) made by the board, the review official must give a copy of the request to the following:

(i) for the review of a failure to make a determination, the person whose failure to make a determination is the subject of the request;

(ii) for a review of a determination with respect to the approval of a forest development plan, range use plan or amendment to either of those plans, the agreement holder to which the plan or amendment relates and the person who made the determination;

(iii) for a review of giving effect, under section 40 of the *Forest Practices Code of British Columbia Act*, to a forest development plan, range use plan or amendment to either plan, the person who gave effect to the plan or amendment.

[am. B.C. Reg. 76/2001, Sch. 1, s. 6.]

Deficient request for review

11 (1) If a request for review does not comply with section 3, the review official may give a written notice of deficiencies to the requesting person, inviting the requesting person, within a period specified in the notice, to submit further material remedying the deficiencies.

(2) If the reviewer gives a notice of deficiencies under subsection (1), the requested review may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the review official of further material remedying the deficiencies.

Agreement holder party to review

11.1 If the board has requested a review of a determination under the *Forest Practices Code of British Columbia Act* with respect to the approval of a forest development plan, range use plan or amendment to either plan, the agreement holder to which the plan or amendment relates is a party to the review.

[en. B.C. Reg. 76/2001, Sch. 1, s. 7.]

Designation of reviewer

12 On receipt of a request for review, the review official must designate the reviewer or reviewers and, if more than one, appoint one of them as the chair.

Notice of review

13 The reviewer must give a notice of review to the person who requested the review, and to the persons referred to in section 10(2), setting out,

(a) in accordance with section 129(2) of the *Forest Practices Code of British Columbia Act*, the basis on which the review is to be conducted, and

(b) if there is to be an oral hearing, the date, time and location of the oral hearing.

Prescribed period for review decision

14 The prescribed period for the purposes of section 129(6)(a) of the *Forest Practices Code of British Columbia Act* is 60 days.

Part 3

FOREST APPEALS COMMISSION PROCEDURE

Notice of appeal

15 The notice of appeal referred to in section 147 (1) of the *Forest Act* and section 131(1) of the *Forest Practices Code of British Columbia Act*, and the notice of appeal for an appeal under section 41 of the *Range Act*, must be signed by, or on behalf of, the appellant and must contain all of the following information:

(a) the name and address of the appellant, and the name of the person, if any, making the request on the appellant's behalf;

(b) the address for giving a document to, or serving a document on, the appellant;

(c) the grounds for appeal;

(d) a statement describing the relief requested.

Deficient notice of appeal

16 (1) If a notice of appeal does not comply with section 15, the commission may invite the appellant to submit further material remedying the deficiencies within a period specified in a written notice of deficiencies, by

(a) serving the written notice of deficiencies on the appellant, if the appeal is under the *Forest Act* or *Range Act*, or

(b) giving the written notice of deficiencies to the appellant, if the appeal is under the *Forest Practices Code of British Columbia Act*.

(2) If the commission serves or gives a notice of deficiencies under subsection (1), the appeal that is the subject of the notice of appeal may proceed only after the earlier of

(a) the expiry of the period specified in the notice of deficiencies, or

(b) the submission to the commission of further material remedying the deficiencies.

Notification of parties following receipt of notice of appeal

17 The commission must acknowledge in writing any notice of appeal, and

(a) in the case of an appeal under the *Forest Act* or *Range Act*, serve a copy of the notice of appeal on the deputy minister of the Ministry of Forests, and

(b) in the case of an appeal under the *Forest Practices Code of British Columbia Act*, give a copy of the notice of appeal to the deputy minister of the Ministry of Forests, in addition to the persons referred to in section 131(6) of that Act.

Procedure following receipt of notice of appeal

18 (1) Within 30 days after receipt of the notice of appeal, the commission must

(a) determine whether the appeal is to be considered by members of the commission sitting as a commission or by members of the commission sitting as a panel of the commission,

(b) designate the panel members if the commission determines that the appeal is to be considered by a panel,

(c) subject to subsections (2) and (3), set the date, time and location of the hearing, and

(d) give notice of hearing to the parties if the appeal is under the *Forest Practices Code of British Columbia Act*, or serve notice of hearing on the parties if the

appeal is under the *Forest Act* or *Range Act*.

(2) The prescribed period for the purposes of section 148(1)(b) of the *Forest Act* is 45 days after the commission receives the notice of appeal.

(3) Despite subsection (2), the parties and the commission may agree to a period other than 45 days.

Panel chair determined

19 For an appeal that is to be considered by a panel of the commission, the panel chair is determined as follows:

(a) if the chair of the commission is on the panel, he or she is the panel chair;

(b) if the chair of the commission is not on the panel but a vice chair of the commission is, the vice chair is the panel chair;

(c) if neither the chair nor a vice chair of the commission is on the panel, the commission must designate one of the panel members to be the panel chair.

Additional parties to an appeal

20 (1) If the board is added as a party to an appeal under section 131(7) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

(2) If a party is added to the appeal under section 131(8) of the *Forest Practices Code of British Columbia Act*, the commission must promptly give written notice of the addition to the other parties to the appeal.

Intervenors

21 (1) If an intervenor is invited or permitted to take part in the hearing of an appeal under section 131(13) of the *Forest Practices Code of British Columbia Act*, the commission must give the intervenor a written notice specifying the extent to which the intervenor will be permitted to take part.

(2) Promptly after giving notice under subsection (1), the commission must give the parties to the appeal written notice

(a) stating that the intervenor has been invited or permitted under section 131(13) of the *Forest Practices Code of British Columbia Act* to take part in the hearing, and

(b) specifying the extent to which the intervenor will be permitted to take part.

Transcripts

22 On application to the commission, a transcript of any proceedings before the commission or the panel of the commission must be prepared at the cost of the person requesting it or, if there is more than one applicant for the transcript, proportionately by all of the applicants.

Prescribed period for appeal decision under the *Forest Act*

23 The prescribed period for the purposes of section 149.1(3) of the *Forest Act* is 42 days after conclusion of the hearing.
[am. B.C. Reg. 76/2001, Sch. 1, s. 8.]

Part 4

ANNUAL REPORT OF THE FOREST APPEALS COMMISSION

Content

24 (1) By April 30 of each year, the chair of the commission must submit the annual report for the immediately preceding calendar year required by section 197(2) of the *Forest Practices Code of British Columbia Act*.

(2) The annual report referred to in subsection (1) must contain

(a) the number of appeals initiated during the year,

(b) the number of appeals completed during the year,

(c) the resources used in hearing the appeals,

(d) a summary of the results of the appeals completed during the year,

(e) the annual evaluation referred to in section 197(1)(b) of the *Forest Practices Code of British Columbia Act*, and

(f) any recommendations referred to in section 197(1)(c) of the *Forest Practices Code of British Columbia Act*.

[am. B.C. Reg. 76/2001, Sch. 1, s. 9.]

Part 5

TRANSITION

Administrative appeals

25 If, before June 15, 1995, a person contravenes a section of the *Forest Act* or *Range Act* that is repealed and replaced by a provision of the *Forest Practices Code of British Columbia Act*, and at the date of the contravention the *Forest Act* or *Range Act* provided a right of appeal in respect of contraventions of that section, the person may appeal a determination that they contravened the section and the appeal provisions of the *Forest Act* or *Range Act* that are in effect at the date of the determination apply to the appeal.

BRITISH COLUMBIA

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